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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1814

RELLA VERDE APARTMENTS, INC., *et al.*,

Petitioners,

v.

STATE OF ARIZONA, COUNTY OF PIMA, STATE BOARD OF PROPERTY TAX APPEALS, COUNTY BOARD OF EQUALIZATION, PIMA, COUNTY BOARD OF SUPERVISORS, PIMA, COUNTY ASSESSOR, PIMA COUNTY TREASURER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

PETITIONER'S REPLY BRIEF

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I

JURISDICTION – FEDERAL QUESTION RAISED

Relying upon Rule 23(1)(f), U.S. Supreme Court Rules, Respondents contend the federal question has not been preserved. Petitioners disagree. In the pleadings and throughout a lengthy trial, the issue of uniformity and discrimination was constantly probed. To append the portions of the trial record raising this issue would entail appending the entire record. Furthermore, permeating the entire Court of Appeals' decision was a discussion of the issue of uniformity and discrimination. In fact, the Court of

Appeals' decision rested upon a determination that, although discrimination may have been proven, bad faith had not been shown. Obviously, the federal question has been explicitly raised.

Respondents also allege failure of compliance with Rule 23(1)(j), U.S. Supreme Court Rules, in failing to append the judgment of the State Court. That Rule indicates Petitioners must append the judgment or decree of the State Court for which review is sought. Since Petitioners are seeking review of the decision of the Arizona Court of Appeals, and the denial of review by the Arizona Supreme Court, Petitioners assert this Rule requires the appendage of those two decisions. Since these two decisions were appended, Petitioners contend full compliance has been made.

Finally, Petitioners contend compliance has been made with Rule 19(1)(a), U.S. Supreme Court Rules, inasmuch as, it is believed, the Arizona Courts have decided this case inapposite to principles previously announced by the United States Supreme Court.

II

Factually, although Respondents contend the State Board found justification for its actions from information supplied in formal hearings, its own investigation and from a sales-ratio study, the testimony indicated members of the Board had no factual basis for making dramatic increases in Petitioners' properties as opposed to minimal, or in many cases, no increases in other properties within the same Statutory Class. Furthermore, the increases to Petitioners' properties were not "modest" as contended by Respondents but, in some

cases, were in excess of forty percent (40%) higher than the valuation previously ascribed to the property by the Pima County Assessor. To be sure, many of the Petitioners' properties were increased about twenty percent (20%), but none of the other properties within Petitioners' Statutory Class were increased more than five percent (5%), while many were not increased at all. This disparity in treatment occurred in the face of a sales-ratio study indicating most of these other properties were "ripe" for increases similar to that suffered by Petitioners' properties.

Respondents contend the Court of Appeals "concluded that not only did Petitioners fail in their proof of intention to discriminate, but also failed to establish that over all inequality, indeed, existed." (RES. BRF. 6) A reading of the Court of Appeals' decision reveals the contrary. In its final paragraph the Court clearly stated there was no evidence that any inequality was deliberately created and that Petitioners failed to establish systematic, intentional discrimination. Consequently, the Court of Appeals did not find discrimination didn't exist but that Petitioners had failed to prove the discrimination was systematic, intentional or as a result of bad faith.

As stated in the Petition, it is Petitioners' contention bad faith is not required if the end result is systematic, intentional discrimination, *Cumberland Coal Company v. Board of Revision of Tax Assessments*, 52 S. Ct. 48, 284 U.S. 23, 76 L.Ed. 146; *Sparks v. McCluskey*, 84 Ariz. 283, 327 P.2d 295; and surely this Equalization Order was systematic and intentional on the part of the Board.

In arguing for denial of the Writ, Respondents would have the Court believe this case involves only a difference of opinion between the assessing authorities and

Petitioners, and merely involves possible errors of judgment. Petitioners strenuously disagree. It cannot be an error in judgment in failing to study all of the Counties within the State of Arizona, nor may it be an error in judgment to fail to study several sub-classifications of property within Petitioners' own Statutory Class, nor is it an error in judgment to utilize a study weighted against Petitioners' properties inasmuch as they sell more frequently than all others within the Statutory Class, nor is it an error in judgment to ignore the sales-ratio study in all sub-classifications of property within a Statutory Class except the Petitioners' properties, nor is it a mere error in judgment to fail to screen the sales which were the basic data for the Board's entire action, to mention only a few of the discrepancies discovered. By the same token, these are not errors in mathematical precision as suggested by Respondents.

Respondents cite *Maish v. Territory of Arizona*, 164 U.S. 599, 17 S. Ct. 193, 41 L.Ed. 567, but that case is inappropriate inasmuch as it merely involved a disagreement between a taxpayer and assessing authorities as to the proper valuation of the taxpayer's properties. Certainly, a case involving a mere question of over-evaluation of taxpayer's property could hardly be further from the issue raised in the instant case. Respondent also cites *Copper Queen Consolidated Mining Company v. Territorial Board of Equalization*, 206 U.S. 474, 27 S. Ct. 695, 51 L.Ed. 1143, but, again, that case is not precedent. Therein, no infringement of the equal protection clause was alleged nor was discrimination or lack of uniformity even at issue. In that case, the Territorial Board of Equalization raised the aggregate value of various Statutory Classes of property within various Counties in Arizona. The question of statutory authority was raised and disposed

of by the Court. Finally, Respondents cite *McCluskey v. Sparks*, 80 Ariz. 15, 291 P.2d 791, knowing full well that decision was later expanded and clarified in *Sparks v. McCluskey*, 84 Ariz. 283, 327 P.2d 295, wherein the Court indicated that, in Arizona, bad faith or actual fraud are not necessary but if the result of intentional acts is discrimination, the assessment cannot stand irrespective of honest motives.

Petitioners agree with Respondents that principles of law uttered in *Charleston Federal Savings & Loan Association v. Alderson*, 324 U.S. 182, 65 S. Ct. 624, 89 L. Ed. 857, are applicable herein but disagree that the facts are analogous. There, the taxpayer was complaining that different techniques of valuation had been used to arrive at the full value of similar types of property within the same Statutory Class. The Court was concerned with the original assessment of the property and not the subsequent process of equalization. The taxpayers in that case failed to prove the values assigned to the other properties were less than their true value; thus, no discrimination was shown to exist. However, in the instant case, the Board's own study indicated most of the other types of property within Petitioners' Statutory Class were in need of increases which, in many cases, would have exceeded the increases assigned to Petitioners' properties. However, without factual reason, the Board failed to increase these properties or increased them negligibly (and even failed to analyze or study some of the property within the Statutory Class).

Thus, in its process of "equalizing," the State Board treated properties within the same Statutory Class in a different manner utilizing different standards and, consequently, produced a lack of uniformity where uniformity

previously existed. The end result was blatant systematic, intentional discrimination against Petitioners' properties, irrespective of the presence of honest motive, and a denial of equal protection under the law.

For the foregoing reasons, as well as those which have been urged in the Petition, Petitioners pray the Court grant their Writ of Certiorari.

Respectfully submitted,

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